



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

18

मामला क्रमांक

G. A. 569/

सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT:	Chait Singh Kanwar, Aged about 32 years, S/o Batuk Singh Kanwar, R/o Atadda, Chowki Belgahna, Police Station: Kota, Bilaspur.
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through the Thana In-charge, Police Station: Kota, Distt.: Bilaspur.
	{Appeal under Section 374 (2) of the Code of Criminal Procedure}	
	Division Bench:	
	Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.	
	2-8-2007	
	Mr. Sanjeev Kumar Agrawal, counsel for the appellant. Mrs. Anju Ahuja, Deputy Govt. Advocate for the State/respondent.	
	Oral judgment dictated on Dais.	
	<u>L.C. Bhadoo, J:</u> -	
	By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 25-6-2001 passed by the 7 th Additional Sessions Judge, Bilaspur in Sessions Trial No.42/2001, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing the murder of his brother Amar Singh, sentenced him to undergo imprisonment for life.	

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	Case of the prosecution, in brief, is that Batuk Singh (PW-1), father of the accused lodged a report Ex.P-1 in Outpost Belgahna to the effect that he has got one daughter and four sons, except Amar Singh (since deceased) all are married. Amar Singh had gone to earn his livelihood, he returned back after seven years, all family members are residing together, previous day (Tuesday) night at about 7 p.m. they went for sleep in separate rooms, at about 1-1.30 a.m. his wife Sukwara raised cries, woke up and save her son he has been attacked. Hearing the cries, he woke up and saw that Chait Singh was passing through the courtyard carrying spade in his hand and on electric light he saw that there were three injuries on right side of head near ear, eye & neck of Amar Singh, blood was oozing out of the injuries. Amar Singh was already dead. When he came outside, he saw that Chaitram had already ran away. First information report Ex.P-1 was sent by Outpost: Belgahna to Police Station: Kota and based on that first information report Ex.P-11 was registered. Batuk Singh (PW-1) also gave merg intimation Ex. P-2 and based on the merg intimation and the above first information reports, offence under Section 302 of the I.P.C. was registered. The Investigating Officer left for the scene of occurrence and prepared inquest Ex.P-3 on the body of Amar Singh. Blood stained soil, plain soil, blood stained bedding and blood stained pillow on which Amar Singh was sleeping were seized under Ex.P-4. One bamboo club was seized under Ex. P-5. Blood stained Lungi of the accused was seized under Ex.P-6. Site plan Ex.P-7 was prepared by the Patwar. The body of Amar Singh was sent for post-mortem examination to Primary Health Centre, Belgahna under Ex.P-8 (A) where Dr. Vipin Vaish (PW-8) conducted post-mortem on the body of	

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	~~Amar Singh and opined that cause of death is shock due to severe bleeding.~~ Weapon of offence spade was sent by the Investigating Officer to the Assistant Surgeon, Primary Health Centre, Belgahna under Ex.P-9(A) for his opinion and Dr. Vipin Vaish (PW-8) gave opinion Ex.P-9 that the injuries found on the body of Amar Singh can be caused by the spade in question. While in police custody, the accused gave memorandum Ex.P-12 regarding the place where he kept the spade and in pursuance of that, he got recovered the spade under Ex.P-13. Site plan Ex.P-27 was prepared by the Investigating Officer. Seized articles were sent for chemical examination to the Forensic Science Laboratory Unit, Bilaspur under Ex.P-29 from where report Ex.P-30 was received. After due completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned 7th Additional Sessions Judge, Bilaspur received the case on transfer for trial. The prosecution in order to establish charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he either pleaded innocence or denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforesaid.	

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	We have heard Mr. Sajeew Kumar Agrawal, learned counsel for the appellant and Mrs. Anju Ahuja, learned Deputy Govt. Advocate on behalf of the State/respondent. At the outset, Mr. Sanjeev Kumar Agrawal has not disputed the homicidal death of Amar Singh. Moreover, Sukwara Bai (PW-2), mother of the accused as also the deceased, has stated in her evidence that in the fateful night when she heard the sound, she woke up and saw that the accused was standing near the cot of Amar Singh and thereafter, he ran away. She raised cries saying that "rush, he is being killed", hearing her cries, Chain Singh, Chatur Singh, Vichar Singh, Jot Kunwar & her daughters-in-law came on the scene and saw Amar Singh in injured condition. Jodhi Kunwar (PW-9) has stated in her evidence that hearing the cries of Sukwara, she went in the room where Sukwara informed her that Chait Singh has attacked Amar Singh. Above evidence is corroborated by the medical evidence of Dr. Vipin Vaish (PW-8) who has stated in his evidence that on 14-9-2000 he conducted post-mortem on the body of Amar Singh and there were three incised wounds on right cheek in the size of 9" x 3" x 2", second wound was above right ear on right temporal region above pinna of the right ear extending up to the cheek in the size of 6" x 2" x 1" and third wound was on middle part of neck extending up to backside of neck in the size of 9" x 3" x 2". The injuries were ante-mortem in nature caused by hard & sharp object and the death was homicidal in nature. His post-mortem report is Ex.P-8. Above injuries were possible to be caused by the spade. Therefore, in view of above ocular and medical evidence, it is established that the death of Amar Singh was homicidal in nature.	

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	As far as involvement of the accused in the crime in question is concerned, Batuk Singh (PW-1), father of the accused as also the deceased, has not supported the prosecution case to the extent that he saw the accused running away carrying spade in his hand, as has been reported by him in the F.I.R. Sukwara Bai (PW-2), mother of the accused as also the deceased, has stated in her evidence that in the fateful night her son Amar Singh was sleeping in the room whereas she ^{was in} sleeping in the Verandah and her husband Batuk Singh was sleeping in a separate room. At about 1.30 in the night she heard sound, therefore, she woke up and saw that Chait Singh was attacking Amar Singh with spade. She raised cries saying "rush, he has been murdered". On hearing her cries, Chain Singh, Chatur Singh, Vichar Singh, Jot Kunwar & her daughters-in-law reached on the spot and her husband Batuk Singh also reached. Light of the room where Amar Singh was sleeping was on. The accused went outside the room. In cross-examination para 9 she has stated that in fact, she did not saw the accused attacking the deceased, but she saw the accused standing towards head of Amar Singh holding spade in his hand. She has not been further cross-examined on this aspect. Therefore, from her evidence it is established that she saw the accused standing on the side of head of deceased Amar Singh holding spade in his hand. When she raised cries, the accused left the room. Sukwara Bai (PW-2) is mother of the accused as well as mother of the deceased. One can realize with how much pain she might had deposed against her son that he was the culprit in the crime in question committing the murder of her other son Amar Singh. Her one son was already dead whereas, other son was facing trial of murder of her son. She withstood with	

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	the prosecution case and categorically stated that she saw that accused Chait Singh was standing on the side of head of deceased Amar Singh holding spade in his hand. There was no reason before her to implicate her own son, the accused, in a false case. Therefore, there is no reason before this Court to disbelieve the evidence of this witness. Presence of the accused in the house is also established from the evidence of Batuk Singh (PW-1) who has stated in his evidence that in the fateful night, Amar Singh & Sukwara Bai were sleeping in one room, whereas the accused was sleeping in a separate room, at about 1.30 p.m. he heard the cries of his wife, when he went near his wife & Amar Singh, he saw Amar Singh lying in injured condition and blood was oozing out of the injuries on head. In para 8, he has stated that since the accused was not at his residence, he informed Kotwar Chandar Lal that accused Chait Singh has attacked Amar Singh. Therefore, from the evidence of Batuk Singh (PW-1) presence of the accused in the house is established. This fact stands established because just after the attack, the accused was not found in the house. Sukwara Bai (PW-2) has stated in her evidence that after attacking Amar Singh, the accused left the house. The evidence of Sukwara Bai is further corroborated by the evidence of Jodh Kunwar (PW-9), sister-in-law of Sukwara Bai, who has stated in her evidence that in the fateful night she was sleeping at her house, they are living in a separate room from the house of Batuk Singh, at about 1.30 a.m. she heard cries from the side of Batuk Singh's house from the room of Amar Singh, therefore, she went towards that side and saw Amar Singh lying on the cot and blood was oozing out of his head. On reaching there, Sukwara,	

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	her sister in law, informed her that Chait Singh has committed the murder of Amar Singh. This witness has not been cross-examined on this aspect. Above evidence of Jodh Kunwar (PW-9) is admissible under Section 6 of the Evidence Act as <i>res gestae</i>, because in the first instance, she heard the cries of Sukwara that her son has been murdered, thereafter, she reached on the spot and Sukwara immediately informed her that Chait Singh has murdered Amar Singh. Therefore, from the evidence of Jodh Kunwar, Sukwara Bai's evidence stands corroborated. Investigating Officer Ashok Pandey (PW-15) has stated in his evidence that while in police custody on 13-9-2000 at about 3 p.m. accused Chait Singh gave memorandum Ex.P-12 that he has kept the spade, weapon of offence, in his room in the Kothi (place meant for storing grains), in pursuance of that, he took him to that room and brought the spade which was seized under Ex.P-13. Above seizure has been proved by Dhanwan (PW-12) who has stated in his evidence that memorandum Ex.P-12 was given by the accused before him to the Investigating Officer and in pursuance of that, the Investigating Officer got the spade recovered under Ex.P-13. Therefore, recovery of spade at the instance of the accused is established. As per the F.S.L. report (Ex.P-30), the spade was found stained with blood. Even Lungi of the accused was seized under Ex.P-6, the same was stained with blood. As per the F.S.L. report (Ex.P-30), blood was found on the Lungi. Of course, there is no Serologist report to establish that the blood which was found on spade & Lungi was of the blood group of the deceased, but this circumstance, if not taken as a substantive piece of	

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	evidence, can definitely be taken into consideration as an additional circumstance from the other circumstantial evidence. We are fortified in our view by the decision of the Apex Court in the matter of State of Rajasthan vs. Teja Ram and others reported in (1999) 3 SCC 507, in para 27 the Apex Court held that "it cannot be said that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility". Similarly, in the matter of Sanjay alias Kaka vs. State (NCT of Delhi) reported in (2001) 3 SCC 190, the Apex Court held that "prosecution's failure to prove origin of blood found on the pant and shirt of the accused who was alleged to have killed the deceased by inflicting dagger injuries - Held on facts, not sufficient to hold that the accused was not guilty of offence of murder". Dr. Vipin Vaish (PW-8) has stated in his evidence that the spade in question was sent for his opinion to know as to whether the injuries which were found on the body of Amar Singh can be caused by the spade in question. As per his report Ex.P-9, he opined that the injuries which were found on the body of Amar Singh can be caused by the spade in question. Therefore, this is also an additional circumstance that the injuries were caused with the spade which was recovered at the instance of the accused. Absence of the accused from the house just after the commission of crime is also admissible under Section 8 of the Evidence Act, against the accused. When his own brother was attacked and died on account of the	

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	attack, why he was missing from the house has not been explained by the accused. Therefore, from the above ocular and circumstantial evidence, it is established beyond all reasonable doubts that the accused was the author of the crime in question. The manner in which the accused attacked with the deadly weapon that too on vital part of the body of his own brother, looking to the nature of injuries and the fact that Amar Singh died instantaneously, establish that the intention of the accused ^{was by} is to commit the murder of Amar Singh. In the result, we do not find any substance in this appeal. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.	
Soma	Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge